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In the Supreme Court of the United States

October Term, 1943.

J. B. WHEAT, *Petitioner,*

vs.

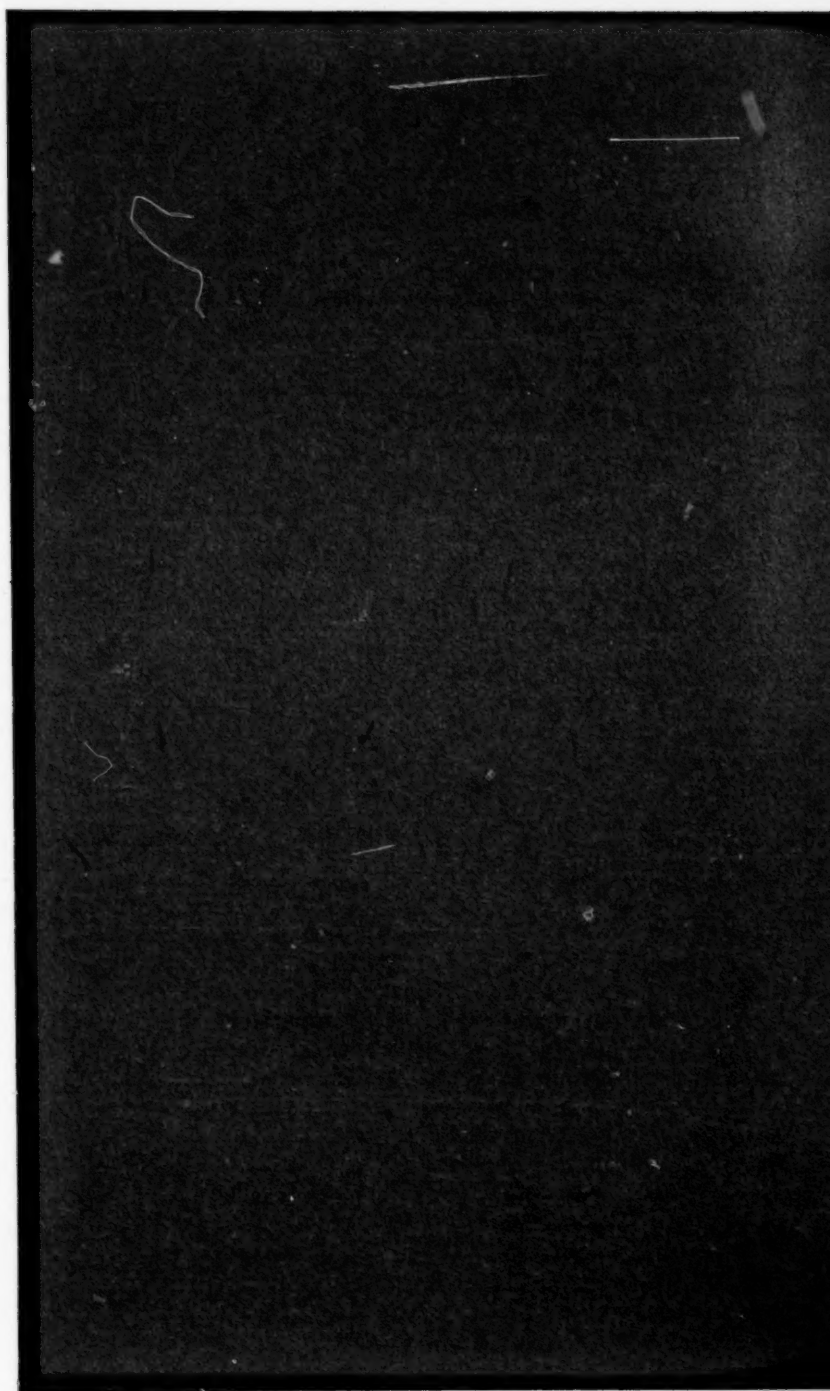
THE TEXAS LAND AND MORTGAGE COMPANY, LIMITED, and
H. T. O'DAY, *Respondents.*

PETITION FOR WRIT OF HABEAS CORPUS TO THE
UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE FIFTH CIRCUIT

WRIT IN SUPPORT THEREOF

THE PETITIONER PRAYS THAT
HE BE RESTORED TO HIS
POSITION AS
PRESIDENT OF THE
TEXAS LAND AND MORTGAGE COMPANY, LIMITED,
AND THAT HE BE RESTORED TO HIS
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In the Supreme Court of the United States

October Term, 1945.

No. —.

J. B. WHEAT, *Petitioner,*

VS.

THE TEXAS LAND AND MORTGAGE COMPANY, LIMITED, and
E. T. O'DANIEL, *Respondents.*

PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE FIFTH CIRCUIT

AND

BRIEF IN SUPPORT THEREOF.

*To the Honorable Chief Justice and the Associate Justices
of the Supreme Court of the United States:*

Your petitioner, Joseph Benton Wheat, respectfully prays that a writ of certiorari be issued to review the final decision of the Circuit Court of Appeals for the Fifth Circuit entered in the above entitled cause on December 28, 1945 (R. 126-130), affirming the decree of the District Court for the Northern Division of Texas (R. 114).

I.

SUMMARY STATEMENT OF MATTER INVOLVED.

(Because of the involved procedure in this matter, a longer statement is made than otherwise would be required.)

The matter originated by petitioner filing on August 27, 1937, his farmer-debtor petition in the United States District Court for the Northern District of Texas, Abilene Division, for relief under Section 75 of the Bankruptcy Act. The petition was approved and referred to the Conciliation Commissioner (R. 37).

While petitioner's bankruptcy proceeding was pending, respondent, The Texas Land and Mortgage Company, Limited, mortgagee in deed of trust on 5440 acres of petitioner's land, scheduled in his farmer-debtor's proceeding, caused said land to be sold on September 7, 1937, under power of sale in said deed of trust, contrary to the request of the Conciliation Commissioner, and became the purchaser thereof (R. 38).

On September 13, 1939, respondent Land Company instituted suit No. 3231 in the District Court of Howard County, Texas, against petitioner, alleging that it was the owner of said lands from the date of foreclosure (Sept. 7, 1937) and asked for an order of title and writ of possession (R. 38).

On petitioner's motion to stay this suit, the Bankruptcy Court, on December 14, 1937, without "hearing and report of the Conciliation Commissioner" (Section 75, subsection (o)) found that petitioner had no feasible method of financial rehabilitation and had "no rights under the aforesaid bankruptcy proceedings," and decreed that

respondent Land Company be permitted thereafter to sell said lands under said deed of trust (R. 62).

Thereupon petitioner filed his Amended Petition under subsection (s) of Section 75 of the Bankruptcy Act with the Conciliation Commissioner, praying for the relief provided for in said subsection (R. 69, 70, 75, 89-91, 101, 120).

On January 4, 1938, the trustee in the deed of trust again sold the property to respondent Land Company and deed was filed January 10, 1938 (R. 40). On January 7, 1938, respondent Land Company amended its petition in said suit No. 3231, alleging that "on the 10th day of September, 1937, and again on the 5th day of January, 1938, it was and still is the owner of such property" (R. 21). In said suit petitioner, in bar and abatement, plead the pendency of his Frazier-Lemke proceeding in the Bankruptcy Court (R. 18). On February 3, 1938, the state court gave judgment for the plaintiff therein (respondent Land Company here) for title and possession of the land and for writ of possession (R. 21).

On February 5, 1938, the Conciliation Commissioner filed with the District Court his report on petitioner's subsections (a) to (r) proceeding (R. 64).

On February 11, 1938, The Texas Land and Mortgage Company, Limited, conveyed the land to E. T. O'Daniel and M. H. O'Daniel (R. 8, 17).

On March 30, 1938, the Bankruptcy Court dismissed petitioner's (a) to (r) proceeding (R. 65, 66).

On December 2, 1940, petitioner filed suit No. 4076 in the District Court of Howard County, Texas, against respondents, Texas Land and Mortgage Company, Limited, and the O'Daniels, defendants below, setting up his rights under Section 75 of the Bankruptcy Act and praying for a decree adjudging the sales under the deed

of trust and the judgment entered by said court in cause No. 3231 to be void, and for recovery of title and possession of said land (R. 41).

Respondents, defendants in said suit No. 4076, plead that the Bankruptcy Court by its order of December 14, 1937, had authorized the trustee's sale held on January 4, 1938, and as *res adjudicata*, the said order and the decree of the state court of February 3, 1938, *supra*, and also estoppel (R. 25, 41).

In a supplemental petition, petitioners plead that the order of the Bankruptcy Court purporting to permit the sale was void, that the subsequent sale was a nullity, and that the judgment against petitioners in suit No. 3231 was void, all because of the automatic statutory stay and jurisdictional ouster provided in Section 75 and of the absence of power in the Bankruptcy Court to surrender its jurisdiction and of petitioners' rights under Section 75 of the Bankruptcy Act (R. 25). The court rendered judgment against the plaintiff (petitioner herein), and adjudged that title and possession be quieted in defendants (respondents here) (R. 25).

On appeal the Circuit Court of Civil Appeals for the Eleventh District of Texas affirmed the order of the trial court and denied motion for rehearing (R. 42). (*Wheat v. Texas Land & Mortgage Co.*, 163 S. W. (2d) 880.)

The Supreme Court of Texas denied petition for writ of error and motion for rehearing, and this Court denied petition for writ of certiorari June 14, 1943 (319 U. S. 785) (R. 42).

On September 20, 1943, petitioner filed, in his proceedings in the United States District Court at Abilene, Texas, his motion to reopen and reinstate that proceeding, alleging that the order dated December 14, 1937, was premature and void because of the statutory stay and

jurisdictional ouster, of all except bankruptcy courts, provided in Section 75 (R. 13-14); that the subsequent filing of petitioners' amended petition under Subsection (s) of Section 75 superseded and rendered naught the said order of December 14, 1937; that respondents O'Daniels had knowledge of the pendency of said debtor's proceedings, including the filing of the amended petition, and of the invalidity of said order of December 14, 1937, when they became purchasers of said land (R. 9).

On October 9, 1943, respondents by their answer (R. 16-20) denied that they disregarded the notice of the Conciliation Commissioner for filing an amended petition under Subsection (s), denied that the order of the United States District Court, dated December 14, 1937, authorizing it to sell the land at trustee's sale was void, and alleged that said order at most was only voidable, and that the debtor had participated in said sale and had caused the sale to the other defendant, O'Daniel, respondent herein, and that said debtor was estopped and barred by his conduct as well as judgments of the state court to question the sale (R. 16-20).

In reply, appellant denied the allegations of the answer and alleged that if the representations as alleged were made by the debtor, and if he did receive a part of the sale commission, the debtor's proceeding in bankruptcy was then pending, O'Daniels had knowledge thereof, the debtor had no title to said lands nor power to divest the Bankruptcy Court's jurisdiction over them, and denied that the state court judgment prevented the Bankruptcy Court from setting aside its void order, reopening this proceeding, and reinstating debtor's proceedings (R. 28).

The District Court entertained appellants' motion to reopen and reinstate and on November 29, 1944 (R. 44) heard evidence, documentary and oral (R. 44-100). At the

conclusion of the hearing the court made findings of fact and conclusions of law (R. 37-44), and on December 13, 1944, entered its judgment (R. 114-115), denying appellants' motion to reopen and granting affirmative relief to respondents. The findings and orders are as follows:

Ruling of the District Court.

"And the Court finding that in the aforesaid 'Motion to Reopen and Reinstate' the debtor has sought (a) that the order of dismissal dated March 28, 1938, be set aside and this proceeding reinstated, (b) that the Court rehear and reconsider debtor's petition for injunction against the Texas Land and Mortgage Co., Ltd., and that the order of December 13, 1937, be set aside, (c) that the Court declare the sale of the property in controversy on January 4, 1938, under deed of trust executed by Joseph Benton Wheat and wife in favor of the Texas Land and Mortgage Co., Ltd., and the judgment of the District Court of Howard County, Texas, entered in cause No. 3231 on February 3, 1938, void, (d) that this case be ordered to proceed upon the debtor's amended petition, which debtor claims he filed under Subsection (s), (e), and that debtor have such further relief as is meet and proper; and the Court having considered the Answer of the defendants Texas Land and Mortgage Co., Ltd., and E. T. O'Daniel filed herein, asking that the aforesaid motion to reopen and reinstate be dismissed and that all relief sought by the debtor be denied, and the Court having heard the pleadings, evidence and argument of counsel, and filed findings of fact and conclusions of law herein, and finding that said debtor has become divested of all title and possession of said land, which has vested in the defendant E. T. O'Daniel:

"It is therefore ordered, adjudged and decreed by the Court that the aforesaid relief prayed for by

debtor, Joseph Benton Wheat, be and the same is hereby refused and denied.

"It is further ordered that the title and possession of the premises in controversy, being situated in Howard County, Texas, and being 5,440 acres of land more fully described in deed of trust executed by Joseph Benton Wheat and wife in favor of the Texas Land and Mortgage Co., Ltd., on December 3, 1929, and of record in Vol. 25, pp. 395-399, inclusive, of the Deed of Trust Records of Howard County, Texas, be and the same are hereby vested and confirmed in the said E. T. O'Daniel."

Ruling of the Appellate Court Below.

The Circuit Court of Appeals (R. 126-130) affirmed the judgment of the District Court and held:

"This appeal is from the judgment refusing the motion to reopen and reinstate the debtor proceeding, but authorizing movant, if so advised, to file proceedings in bankruptcy, without prejudice, however, to O'Daniel's title to the land.

"From this judgment, Wheat, the debtor, alone appeals. Putting his trust in *Kalb v. Feuerstein*, 308 U. S. 433, and the many cases which have held that Section 75 of the Bankruptcy Act subjects to exclusive federal jurisdiction the farmer debtor and his property, automatically stops all foreclosure proceedings in state court suits after debtor petition is filed unless consent of the bankruptcy court is given in strict accordance with the requirements of the statute, he insists that the foreclosure was ineffective and the state court judgments were invalid.

"Appellees, relying on *Union Joint Stock Land Bank v. Byerly*, 310 U. S. 1; *Bernards v. Johnson*, 314 U. S. 19, and the many cases decided on their authority, insist: that the order of the bankruptcy court authorizing the mortgagee to proceed with the trustee's sale was not void but merely erroneous; and

that not appealed from but acquiesced in, it became final and furnished full support for the judgment in the first state court suit. They insist further: that the order of March, 1938, dismissing the debtor proceeding was likewise, if not correct, merely erroneous; that it became final when not appealed from so that the bankruptcy court lost jurisdiction of the debtor and his property; and that the property having thereafter been sold to O'Daniel and judgment entered in his favor in the state court suit, it is too late now to attempt to reopen the debtor proceeding. Finally, pointing out that plaintiff, after all these things had transpired, invoked the jurisdiction of the state court in a suit of trespass to try title, tendered for trial and decision there every point and issue which he is now finally barred and estopped by it.

"We agree with appellees. Every matter in controversy in this present litigation, except whether appellant, after his debtor petition failed, filed in the proceeding and prosecuted a Section 75 (s) petition, were raised and expressly decided in the state court case. That question, though not expressly raised and decided, was within the compass of the tendered issues, and under the settled principles of *res adjudicata* it was settled and concluded by the judgment. To permit plaintiff to again litigate the questions already litigated and decided against him would be in complete violation of the principle that matters once determined may not be again litigated. If, therefore, we could agree with appellant that the issues had been wrongly decided in the state court, we should nevertheless affirm the judgment here. But we do not agree with the appellant. We agree fully with the disposition made and the reasons given in the state court opinion, and, without burdening this opinion, therefore, with further statement of the facts or discussion of the legal questions raised, we content ourselves with saying that for the reasons set out in that opinion, the judgment is

"AFFIRMED."

II.

Basis of Jurisdiction of This Court.

The jurisdiction of this Court is conferred by Section 24 (c) of the Bankruptcy Act (11 U. S. C. A., Sec. 47 (c)), and by Section 240 (a) of the Judicial Code (28 U. S. C. A. 347 (a)).

The petitioners have complied with Section 8 (a) of the Act of February 13, 1925, 28 U. S. C. A. 350. The final judgment of the Appellate Court below was entered on December 28, 1945 (R. 126). This petition is filed within three months thereafter. The mandate of the Appellate Court has been stayed to March 28, 1946.

III.

Questions Presented.

1. Whether the statutory stay and jurisdictional ouster provided in Section 75 of the Bankruptcy Act, as amended in 1935, precludes a bankruptcy court, while debtor's proceeding is pending under Subsection (a-r) from permitting a foreclosure sale passing title to debtor's property, and from surrendering its exclusive jurisdiction to debtor's property before hearing and report of the Conciliation Commissioner. Is an order made by a bankruptcy court permitting such foreclosure and a subsequent state proceeding to quiet title before such hearing and report void?

2. Whether such an order, permitting foreclosure and state court proceeding made in a proceeding under (a-r), is effective after the debtor files his amended petition under Subsection (s). Does the filing of the amended petition under Subsection (s) supersede or render in-

effective such prior order of the court made under Subsections (a-r)?

3. Whether petitioner in the action to reopen and reinstate the bankruptcy proceeding (for the reasons set forth in Question No. 5) is estopped, because of the state court judgment, from asserting that the filing of the amended petition under Subsection (s) superseded the order (entered in the a-r proceeding) permitting foreclosure.

4. May a farm-debtor, while his proceeding is pending under Subsection (s), by participation in the sale of the property then in the custody of the court, be estopped to the prejudice of the estate in bankruptcy from thereafter asserting the invalidity of a foreclosure passing title and of a judgment of a state court quieting title?

5. The petitioner filed a motion to reopen and reinstate the proceeding in the District Court on the grounds that the court exceeded its jurisdiction under the Act in permitting a state court foreclosure passing title while the debtor's proceeding was pending under Section 75 (a-r) and before hearing and report of the Conciliation Commissioner, and that its order authorizing said foreclosure was void, and alleged that after the order permitting the foreclosure and before said foreclosure, petitioner had filed an amended petition under Subsection (s), and that the amended petition superseded and rendered naught the order entered in the (a-r) proceedings. The respondents filed answer thereto, alleging that the said order was at most voidable, and that petitioner had participated in the sale of the property (while the bankruptcy proceeding was pending and while the property was in custody of the court), and that he was thereby estopped by his conduct, as well as by the state court decree entered subsequently to said order quieting title in respondents, from questioning the validity of the sale. The court, after hear-

ing the witnesses and evidence and arguments of counsel, filed findings of fact. There was no finding that any intervening rights had become vested on the faith of the order which could not be adequately protected upon revesting title in debtor. The court also entered conclusions of law. The judgment denied said motion and gave affirmative relief to respondents. Under such conditions does not an appeal lie from the original order, and the time for the appeal is to be counted from the latter order refusing to modify the original? Under such conditions, if the original order is erroneous, is it not error for the bankruptcy court to refuse to reverse its original order and reinstate the proceeding?

6. Whether a state court judgment, entered while debtor proceedings are pending under Subsections (a-r), affirming the validity of such an order made under such circumstances as stated in Question No. 1, prohibits a bankruptcy court on proper application from subsequently reinstating said proceedings if no rights have become vested on the faith of the said order which could not be adequately protected upon revesting title in the debtor.

IV.

Reasons for Granting the Petition.

I.

The Circuit Court of Appeals held (R. 129) that an order permitting a foreclosure sale passing title to debtor's property and a State Court proceeding to quiet title in respondents entered by a Bankruptcy Court while debtors' proceeding was pending under subsections (a-r) of Section 75 of the Bankruptcy Act, and before hearing and report of the Conciliation Commissioner was only a

voidable order. The court acknowledged its decision is in conflict with *Collins v. Federal Land Bank of St. Paul*, 119 Fed. (2d) 228 (8 C. C. A.) and *Mangus v. Miller*, 317 U. S. 178 (which hold that the Act provides for an "automatic stay" against such procedure), and also in conflict with *Bastain v. Erickson*, 114 Fed. (2d) 338 (10 C. C. A.), *Hoyt v. Citizens Bank of Albany Co.*, 89 Fed. (2d) 105 (6 C. C. A.), *Trego v. Wright*, 111 Fed. (2d) 990 (6 C. C. A.) (which hold that such an order is void).

II.

The Circuit Court of Appeals held (R. 30) that the question of the effect of the pendency of the Frazier-Lemke proceeding upon the State Court foreclosure was adjudicated in the subsequent State Court action (No. 4076) and was *res adjudicata* in the present action. The decision is in conflict with *U. S. v. Mosher*, 266 U. S. 236, 45 S. Ct. 66, which holds that "The doctrine of *res adjudicata* does not apply to unmixed questions of law."

III.

The Circuit Court of Appeals held (R. 130) that if the issues had been wrongfully decided in the State Court it would nevertheless affirm the judgment of the District Court in refusing to modify the original decree. The decision is in conflict with decisions of this Court and other appellate courts. This Court, in *Pepper v. Litton*, 308 U. S. 295, 60 S. Ct. 238, held that "Courts of Bankruptcy are essentially courts of equity * * * The bankruptcy courts have exercised these equitable powers * * * in the end that fraud will not prevail, that substance will not give way to form, that technical considerations will not prevent substantial justice from being done." In *Pfister v.*

Northern Ill. Finance Co., 317 U. S. 133, 138, 63 S. Ct. 133, 138, this Court held: "The entire process of rehabilitation, reorganization, or liquidation is open for re-examination out of time by the District Court * * *." In *Seagraves v. Wallace*, 69 Fed. (2d) 163 (5 C. C. A.) the court held: "An Appellate Court, so long as it has jurisdiction over the controversy, ought to have power to do justice according to law, * * * Justice is better than consistency * * * It may not say *stare decisis* but *fiat justitia, ruat coelum*."

IV.

The Circuit Court of Appeals held (R. 130) that it "agreed fully with the disposition made and the reasons given in the State Court opinion" (163 S. W. (2d) 880). The State Court decision held that the said order of the Bankruptcy Court permitting foreclosure was not void. Such decision is in conflict with the decisions cited in Reason I above. It also held that the debtor was estopped from asserting the invalidity of the said order as he had induced O'Daniel to purchase the land. The decision as to estoppel is in conflict with *Isaacs v. Hobbs Co.*, 282 U. S. 734, 51 S. Ct. 270, which holds:

"* * * The jurisdiction in bankruptcy is made exclusive in the interest of the due administration of the estate and the preservation of the rights of both secured and unsecured creditors. This fact places it beyond the power of the court's officers to oust it by surrender of property which has come into its possession * * *"

and with *In re Chicago, R. I. & P. Ry. Co. v. City of Owatonna*, 120 F. (2d) 226, l. c. 227 (8 C. C. A.), where the court held:

“* * * there is no power in the officers of a bankruptcy court to affect this exclusive jurisdiction of that court whether by waiver, estoppel or laches
* * *”

V.

The Circuit Court of Appeals decision (R. 126-130) is in conflict with the decisions of other Circuit Court of Appeals and of this Court, which hold that when a motion for rehearing is granted and the issues of the original order are re-examined and an order is entered either denying or allowing a change in the original order, the time for review begins to run from that entry and the basis of the earlier order is again in issue. *Pfister v. Northern Ill. Finance Co.*, 317 U. S. 144, 63 S. Ct. 133. *In re Price*, 99 Fed. (2d) 691 (C. C. A.). *Bowman v. Lopereno*, 311 U. S. 262, 61 S. Ct. 201. *Wayne United Gas Co. v. Owens Ill. Glass Co.*, 300 U. S. 131, 57 S. Ct. 382.

The original order being erroneous, the Circuit Court of Appeals erred in not reversing the judgment of the District Court. *John Hancock Mutual Life Ins. Co. v. Bartels*, 308 U. S. 180, 60 S. Ct. 221; *Union Joint Stock Land Bank v. Byerly*, 310 U. S. 1, 60 S. Ct. 773.

VI.

The decision disregards the fact that “the protection of the farmers was left to the farmers themselves or to the Commissioners who might be laymen * * * and farmers shall not be required to be represented by an attorney in any proceeding under this Section” (*Kalb v. Feuerstein*, 308 U. S. 433), and gives a literal interpretation to the Act in disregard of and in conflict with *Wright v. Union Central Life Ins. Co.*, 311 U. S. 273, which holds:

"* * * the Act must be liberally construed to give the debtor the full measure of the relief afforded by Congress (*John Hancock Mutual Life Ins. Co. v. Bartels, supra*; *Kalb v. Feuerstein, supra*), lest its benefits be frittered away by narrow, formalistic interpretations which disregard the spirit and the letter of the Act."

Prayer.

WHEREFORE, Joseph Benton Wheat, your petitioner, prays that a writ of certiorari be issued to review the judgment entered December 28, 1945, in the United States Circuit Court of Appeals for the Fifth Circuit (R. 126-130) in the above entitled case; and that your petitioner be granted such other and further relief as may be proper.

JOHN T. BARKER,
11th floor Commerce Bldg.,
Kansas City, Mo.,

FRANK P. BARKER,
1100 Waltower Building,
Kansas City, Missouri,
Counsel for Petitioner.

JOHN W. HUDSON,
718 Commerce Building,
Kansas City, Missouri,
Of Counsel.
March 21st, 1946.